

Denise Buckley

From: Denise Buckley
Sent: Tuesday, May 30, 2017 4:53 PM
To: 'Leo Glickman'
Subject: RE: Burks v Stickney, 16-cv-759 - notices of deposition

Leo,

We will endeavor to make the witnesses available in Albany for their depositions. Please reply to my request below about the dates of the depositions for your client and defendants Kirkpatrick and Smith.

Best regards,

Denise Buckley | Assistant Attorney General

Litigation Bureau
NYS Office of the Attorney General
State Capitol | Albany, NY 12224
Tel: (518) 776-2294 | Fax: (518) 915-7738 | denise.buckley@ag.ny.gov

From: Leo Glickman [mailto:lglickman@stollglickman.com]
Sent: Tuesday, May 30, 2017 4:07 PM
To: Denise Buckley <Denise.Buckley@ag.ny.gov>
Subject: RE: Burks v Stickney, 16-cv-759 - notices of deposition

PS please respond to the below by close of business tomorrow. I need some lead time to make arrangement for travel and staying upstate, and need this resolved sooner rather than later.

From: Leo Glickman
Sent: Tuesday, May 30, 2017 11:30 AM
To: 'Denise Buckley' <Denise.Buckley@ag.ny.gov>
Subject: RE: Burks v Stickney, 16-cv-759 - notices of deposition

Denise –

You cannot simply declare the location and terms of the deposition. We have Federal Rules of Civil Procedure that address these matters. First, all parties must consent to a deposition by remote means or the party seeking it must move for a court order FRCP 30(b)(4). We do not consent.

Furthermore, generally the party noticing the deposition has the choice to conduct the deposition at a location of his or her choosing. See *e.g.* Greer v. Mehiel 2017 WL 543453 (SDNY 2017). In addition, there is a presumption that the location of the deposition is acceptable if the location is within the judicial district of the case.

In truth, I chose the Albany location as the most convenient location for all involved. I could have chosen Kingston, NY, which is still in the northern district and which would be far more convenient for me than Albany, but didn't in the interest and convenience of everyone involved. So your declaration that the defendants will simply not appear in Albany, without any conferral with me, is especially exasperating and arrogant.

If you are refusing to produce party defendants in Albany, please let me know and I will seek an order to compel, and will certainly ask for sanctions at this point. Of course, it is certainly your prerogative to seek a court order requiring that the deposition be conducted by remote means, we will oppose it.

Leo Glickman
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From: Denise Buckley [<mailto:Denise.Buckley@ag.ny.gov>]
Sent: Friday, May 26, 2017 4:06 PM
To: Leo Glickman <lglickman@stollglickman.com>
Subject: Burks v Stickney, 16-cv-759 - notices of deposition

Leo,

We have no objection to recording defendants' depositions by stenographic and video means. I have confirmed the availability of defendants Cross, Pepper, Stickney and Racette for the dates in your notices. Defendant Kirkpatrick is not available for deposition on June 29th, but is available between June 20th and June 27th. Defendant Smith is not available June 20th, but is available June 23rd, 27th or 28th. Defendant Nolan is retired and I have not been able to make contact with him yet. The defendants will appear at Clinton CF for their depositions, not in Albany. There is a facility for them to appear by video link up from Clinton. Please let me know if the court reporting company you have designated can arrange for video link up. Otherwise, you may attend at our office in Albany to conduct the depositions by video link-up. Alternatively, you may attend at Clinton for the depositions.

We need to agree the adjourned date for your client's deposition. Please let me know if you are available June 14th, 15th or 16th starting at 10 am. We can start a little later if that suits you better.

You will have to subpoena any non-party witnesses you wish to depose. Please note we will not accept service on behalf of any non-parties.

Best regards,

Denise Buckley | Assistant Attorney General
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From: Leo Glickman [<mailto:lglickman@stollglickman.com>]
Sent: Friday, May 19, 2017 5:08 PM
To: Denise Buckley <Denise.Buckley@ag.ny.gov>
Subject: notices of deposition

These are for the current parties. Once I determine who else at DOCCS I may want to depose, will you produce them or will I have to subpoena? Please advise.

Also, please note that I plan on recording these depositions by stenographic and video means. I am alerting you should you have any objection.

Finally, of course these dates are flexible according to your schedule and that of your clients. I have also dropped in the mail.

Leo Glickman
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